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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,127	09/12/2003	Joseph A. Lang	3191E-000001/COF	9072

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EXAMINER

TORRES, MELANIE

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,127

Applicant(s)

LANG ET AL.

Examiner

Melanie Torres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 20-31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 4, 6, 8-10, and 12-15 respectively of U.S. Patent No. 6,648,105. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made a brake pedal of a unitary structure as brake pedals of a unitary structure a well known in the art for actuating the brakes of a vehicle.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 25, 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Strait.

Strait discloses a vehicle comprising: a frame supported by a plurality of wheels; an accelerator pedal; a brake pedal (64) including a unitary foot actuated portion; a brake system receiving input from said brake pedal and generating an output to control a braking device, and a brake pedal locking mechanism (30) operatively cooperating with said brake pedal to provide a locked position beyond an end of said operating stroke, said brake pedal locking mechanism further operable to automatically unlatch said brake pedal from said locked position upon movement of said brake pedal beyond said locked position.

5. Claims 20, 22, 23, 25, 27-32, 34, 35, and 37-40 are rejected under 35 U.S.C. 102(e) as being anticipated by White, III et al.

White III, et al. discloses a vehicle comprising: a frame (6) supported by a plurality of wheels (8); an accelerator pedal (24); a brake pedal (74) including a unitary foot actuated portion; a brake system receiving input from said brake pedal and generating an output to control a braking device, and a brake pedal locking mechanism

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(64, 68, 72) operatively cooperating with said brake pedal to provide a locked position beyond an end of said operating stroke, said brake pedal locking mechanism further operable to automatically unlatch said brake pedal from said locked position upon movement of said brake pedal beyond said locked position. (Column 6 lines 13-26)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strait.

Re claims 20, 22 and 23, Strait discloses a vehicle comprising: a frame supported by a plurality of wheels; an accelerator pedal; a brake pedal (64) including a unitary foot actuated portion; a brake system receiving input from said brake pedal and generating an output to control a braking device, and a brake pedal locking mechanism (30) operatively cooperating with said brake pedal to provide a locked position beyond an end of said operating stroke, said brake pedal locking mechanism further operable to automatically unlatch said brake pedal from said locked position upon movement of said brake pedal beyond said locked position. However, Kazarian, Jr. does not teach wherein the vehicle is a golf car. It would have been obvious to one of ordinary skill in

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the art at the time the invention was made to have used a pedal assembly in a golf cart since pedal assemblies are well known in the art in all vehicles.

8. Claims 21, 24, 26, 33, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strait or White III, et al. in view of Kazarian, Jr.

Re claims 21, 24, 26, 33, and 36 Kazarian, Jr. teaches a kickoff mechanism which couples said accelerator pedal to said brake pedal locking mechanism and which actuates said brake pedal locking mechanism to unlatch said brake pedal from said locked position upon actuation of said accelerator pedal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a release of the brake pedal by depression of the accelerator in order to provide an alternative means of release of the braking mechanism.

Response to Arguments

9. Applicant's arguments filed August 16, 2004 have been fully considered but they are not persuasive. Applicant argues that the device of Strait is only suitable to set a parking brake. This is acknowledged. However, applicant's claim language referring to a "varying degree of braking power" does not overcome the rejection because a parking brake is capable of meeting that limitation depending upon how the operator depresses the pedal which can vary in it's force.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, pedal combinations are obvious to use in a variety of vehicles as is well known in the art.

The rejection of claims 24 and 26 were inadvertently not included in the rejection applied to claim 21, which included the same limitation. See above. Further, see the additional rejections applied above.

The double patenting rejection will be maintained until the formal filing of a terminal disclaimer.

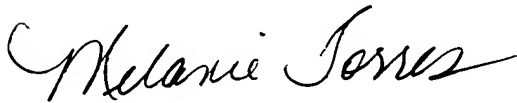
Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Torres whose telephone number is (703)305-0293. The examiner can normally be reached on Monday-Friday, 6:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on (703)308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, reading "Melanie Torres".

MT

December 2, 2004